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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. [redacted] 760

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

versus

FRANK MOORING

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

On March 14, 1969 the Louisiana State Board of Medical Examiners filed a suit seeking a Temporary Restraining Order and Injunction enjoining Frank Mooring from practicing medicine without a required certificate from the Louisiana State Board of Medical Examiners under LSA-R.S. 37:1286. The State District Judge refused to grant a Temporary Restraining Order on the 14th day of March, but rather set a hearing for March 26, 1969 to determine whether a preliminary injunction should be granted. On March 26, 1969, the District Judge again ordered that a hearing be set for March 31, 1969. On this date, a hearing was had on the merits of this case and an injunction was issued

enjoining Mr. Mooring from practicing medicine without a license.

The Louisiana State Board of Medical Examiners filed in the record numerous affidavits showing that Mr. Mooring had been, in fact, practicing medicine. It also showed that Mr. Mooring passed out brochures showing that he could cure Asthma, Liver trouble, and Heart trouble. Neither Mr. Mooring nor any of his eighty (80) patients filed any affidavits or any proof in the record to controvert the allegations of the State Board of Medical Examiners. The District Judge, accordingly, felt that Mr. Mooring had not complied with the licensing statute and enjoined him from practicing medicine without first qualifying under the Act. Mr. Mooring and his patients have filed various appeals to the Appellate Courts of the State of Louisiana, all of which appeals have been denied.

QUESTIONS PRESENTED

Is the Louisiana Medical Practice Act an unreasonable or arbitrary exercise of the State's police power such as to deprive appellants of their constitutional rights to freely choose the method of treatment of their ills?

REASONS FOR DENYING THE PETITION

1) The Louisiana Medical Practice Act does not deny to appellants the right to go to a chiropractor who has complied with the Louisiana Licensing Statute.

2) The Supreme Court on two (2) separate occasions has held that the Louisiana Medical Practice Act is a proper exercise of the State's police power.

ARGUMENT

Appellants — intervenors have attacked the Louisiana Medical Practice Act, LSA-R.S. 37:1261 et seq. upon the grounds that it deprives them of the right to be treated by a chiropractor and, therefore, violates their Fourteenth (14th) Amendment rights.

It is well settled that a state may consistently, with the Fourteenth (14th) Amendment, prescribe that only persons possessing reasonably necessary qualifications of skill practice medicine. See *Graves v. Minnesota*, 272 US 425, 71 L.Ed. 331, 47 S. Ct. 122 (1926); *Dent v. West Virginia*, 129 US 114, 32 L.Ed. 623, 9 S. Ct. 231 (1889).

The Louisiana Medical Practice Act is no stranger to this Court, having been here on two (2) prior occasions. In both cases this Honorable Court upheld the constitutionality of the present Act in all respects. See *Louisiana State Board of Medical Examiners v. Fife*, 162 La. 681, 11 So. 58 (1926), affirmed, 272 US 425, 47 S. Ct. 122, 71 L.Ed. 331 (1936); *England v. Louisiana State Board of Medical Examiners*, 246 F. Supp. 993, (E. D. La. 1965) affirmed, 384 US 885, 16 L. Ed. 2d 998, 86 S. Ct. 1924 (1966).

As the Three Judge Court held in the *England* case, page 996:

> "We approach resolution of this problem fully cognizant of the 'principle that the state is primarily the judge of regulations required in the interest of public safety and welfare, and its police statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise the authority vested in it in the public interest' ".

As the Court noted in the *England* case, the State of Louisiana does not prohibit the practice of chiropractic, but only requires that a chiropractor comply with the provisions of the Medical Practice Act, before he starts practicing on patients here in Louisiana.

The provisions of the Act are part of a comprehensive legislative program designed to carry out the public policy of Louisiana that the citizens here receive the best possible medical treatment.

The contention by the appellants — intervenors that chiropractors are not allowed to practice here in Louisiana is incorrect as the Three Judge Court found in *England vs. Louisiana State Board of Medical Examiners* at page 996,

> "At the outset, it should be noted that the laws of the State of Louisiana do not prohibit the practice of chiropractic. As a matter of fact, as this record shows, one chiropractic complied with the provisions of the Medical Practice Act and subsequently practiced chiropractic in the state."

The Court in *England* further went on to say that the question of whether or not the chiropractor should be required to qualify under the Medical Practice Act was a question which addressed itself to the legislature and if the people felt that the legislation was unjust, their recourse was to the polls and not to the courts. See also the case of *Williamson v. Lee Optical Company*, 348 US 483, 487, 75 S. Ct. 461, 464, 99 L.Ed. 563 (1955).

The contention by appellants that the issue put forth by them is a novel one and has not been ruled upon by this Court, we respectfully submit is in error. The Fourth (4th) Circuit Court of Appeals in the instant suit on page 3 quoted from *England v. Louisiana State Board of Medical Examiners*, 259 F. 2d 626, 627, (5th Cir., 1958) and stated:

> "The state cannot deny to any individual the right to exercise a reasonable choice in the method of treatment of his ills, nor the correlative right of practitioners to engage in the practice of a useful profession."

As the Court can well see, this issue was litigated and was subsequently decided in the Three Judge Court suit which was later affirmed by this Honorable Court.

In addition, a very similar issue was recently raised before this Honorable Court in the case of *Head v. Board of Examiners*, 374 US 424, 10 L.Ed. 2d 983, 83 S. Ct. 1759 (1963). Your Honors, in that case, held that the newspaper's constitutional rights were not violated by

the New Mexico statutes which prohibited advertising by the quotation of prices or terms for the sale of eyeglasses, when it enjoined the newspaper from accepting or publishing a Texas optometrist's advertising. The Court at page 990, stated:

> "The appellant, Head, claims that the denial of her right to do business with Abner Roberts is a violation of her privileges of and immunities on national citizenship. But the privileges and immunity clause of the Fourteenth Amendment does not create the naked right to conduct a business free of other valid state regulations. *Madden v. Kentucky*, 309 US 83, 92, 93, 84 L.Ed. 590, 595, 60 S. Ct. 406."

We respectfully submit that the Louisiana Medical Practice Act has consistently, with the Fourteenth Amendment, prescribed reasonable and necessary qualifications for the practice of medicine in Louisiana and that such legislation certainly is within the valid police power of the State of Louisiana.

CONCLUSION

For the foregoing reasons, this Petition for Certiorari should be denied and the decision of the State District Court and the affirmance by the higher courts of Louisiana is correct on the basis that the Louisiana Medical Practice Act is a reasonable and necessary qualification for the practice of medicine in Louisiana. The application for writs should be denied.

All of which is

Respectfully submitted,

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CERTIFICATE

I, the undersigned member of the Bar of this Honorable Court, do hereby certify that copies of the above and foregoing Brief in opposition to the Petition for Certiorari have been served upon appellant, Frank Mooring, by depositing the same, postage prepaid, in the United States mail, addressed to Joel T. Chaisson, Box 73, Luling, Louisiana on this ____ day of October, 1970.

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